

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1027 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAVJIBHAI VAGHJIBHAI PATEL THRO' HEIRS & LEGAL REPRES.

Versus

THAKURBHAI BHIKHABHAI PATEL

Appearance:

MR BG PATEL for Petitioners
RULE SERVED for Respondent No. 1
MR MB GANDHI for Respondent No. 5
RULE UNSERVED for Respondent No. 6

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 26/04/99

ORAL JUDGEMENT

By means of this petition, the petitioners have sought for quashing the orders of the Gujarat Revenue Tribunal, Ahmedabad at Annexures "E", "F" and "G" and restore the order passed by the Mamlatdar and ALT at Annexure "A" and the Deputy Collector at Annexure "D" to the petition.

2. Heard the learned counsel for the parties. The learned counsel for the petitioners pointed out from Annexure "E" that the petitioner no.1 was a party-respondent no. 6 to the revision. It appears from the order that the respondent nos. 3,4,5 and 6 were deleted, but there is nothing on record to show that how their names were deleted from the Revision Application and it appears that the advocate of Thakorbhai Bhikhabhai Patel and Thakur Mohanbhai Jenabhai gave a joint pursis to take up the matter for hearing in the interest of justice on 6th January, 1995. However, 6th January, 1995 was not fixed for hearing and no notice was given to the parties concerned on 6.1.1995. On the basis of the pursis filed by the aforesaid two parties, the case was taken up for hearing and both the parties requested to remand the case to the Mamlatdar and ALT and to give an opportunity of being heard to the parties and conduct the matter afresh. Accordingly, Gujarat Revenue Tribunal passed the order on the same date, i.e. on 6th January, 1995 remanding the matter to Mamlatdar and ALT, Anand with a direction to issue notices to the concerned/interested parties giving them an opportunity to produce evidence and hearing and to proceed with the matter in accordance with law.

3. The learned counsel for the petitioners again pointed out that the petitioner no.1 Ravjibhai Vaghjibhai Patel who was respondent no. 6 in the Revision Application was alive at the time when the order dated 6th January, 1995 was passed and died on 12th May, 1995. He is said to have gifted the property to the petitioner no. 2 on 4.4.1995. As such, the petitioner nos. A, B, C, D and E i.e. heirs and legal representatives of petitioner no.1 Ravjibhai Vaghjibhai Patel and petitioner no. 2 Narayan Swarupdasji Gurudyan Purushdasji Shashtri are also interested parties and they should be given an opportunity of hearing before Mamlatdar and ALT, Anand. For that purpose, the petitioner no.1 Ravjibhai Vaghjibhai Patel filed a Revision Application before the Tribunal and that application was rejected by the Tribunal on the ground that Ravjibhai Vaghjibhai Patel had died on 12th May, 1995 and heirs of the deceased have not been brought on record within 90 days from the date of his death and hence proceedings of the Revision application had abated under regulation 24 of BRT Regulations, 1958. Miscellaneous Application of the petitioner no.1 through his legal heirs for setting aside the abatement and bringing the heirs and legal representatives of the deceased on record was also rejected on 30th September, 1997.

4. Considering the overall facts and circumstances stated above, the petitioner nos. A,B,C,D, and E who are heirs and legal representatives of the petitioner no.1 Ravjibhai Vaghjibhai Patel and Narayan Swarupdasji Gurudyan Purushdasji Sashtri-petitioner no. 2 are necessary parties to the proceedings and hence they should be given an opportunity of hearing before the Mamlatdar and ALT, Anand where the matter is pending. Therefore, this petition deserves to be allowed.

5. Accordingly, this petition is allowed.

The judgment and orders passed by the Gujarat Revenue Tribunal at Annexures "E", "F" and "G" are set aside and matter is remanded to the Mamlatdar and ALT, Anand who is directed to hear the aforesaid parties as necessary and interested parties if they apply before him within a month from the date of this judgment. The petitioners are at liberty to move the Mamlatdar and ALT, Anand for impleading them as parties in the proceedings before him. The Mamlatdar and ALT, Anand is directed to give them an opportunity of hearing and produce evidence, if any, and decide the matter afresh in accordance with law. The interim order granted by this court is vacated. Rule is made absolute accordingly with no order as to costs.

***darji